

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE, LODGE 7,	:	
	:	
Petitioner,	:	REPRESENTATION PETITION
	:	
and	:	<u>NO. 00-10-292</u>
	:	
UNIVERSITY OF DELAWARE, DEPARTMENT OF	:	
PUBLIC SAFETY,	:	
	:	
Respondent.	:	

APPEARANCES

For FOP Lodge 7: Timothy P. Mullaney, Sr., Esq.

For University of Delaware: Alfred J. D'Angelo, Jr., Esq.
Klett, Rooney, Lieber & Schorling

BACKGROUND

The University of Delaware (“University”) is a public employer within the meaning of §1602(l) of the Police Officers and Firefighters Employment Relations Act (19 Del.C. Chapter 13, “POFERA”).

Fraternal Order of Police, Lodge 7 (“FOP”) is an employee organization within the meaning of 19 Del.C. §1602(g).

On October 18, 2000, the FOP filed a certification petition with the Public Employment Relations Board (“PERB”) seeking to represent a new bargaining unit comprised of “all University of Delaware Police Officers at and below the rank of Sergeant.” The University objected to the appropriateness of the proposed bargaining

unit, asserting separate bargaining units should be created for the Lewes and Newark campuses.

A hearing was held on December 13, 2000, at which time the parties were afforded full opportunity to present evidence in support of their respective positions. The record closed with the filing of letter memoranda, the last of which was received on February 1, 2001.

This decision results from the record created by the parties.

ISSUE

Whether a single bargaining unit of University of Delaware Police Officers at and below the rank of Sergeant constitutes an appropriate bargaining unit within the meaning of 19 Del.C. §1610(d)?

POSITIONS OF THE PARTIES

FOP Lodge 7:

FOP Lodge 7 contends a single bargaining unit of Police Officers, Master Police Officers, Corporals and Sergeants is appropriate under 19 Del.C. §1610(d). All University of Delaware police officers are engaged in standard police work, performing tasks required to protect life, property and public peace on University campuses. The University stipulated that one set of job descriptions covers all officers, regardless of campus assignment. The officers in questions are covered by the same wage and benefit plan and are regulated in their work by a common set of General Orders issued by the single University-wide Chief of Police. Officers can be transferred between campuses

without additional training. Overtime opportunities are offered department-wide, and officers are assigned to special duty assignments on both campuses. All University police officers must be certified law enforcement officers.

The differences in types of activities at the two campuses are irrelevant to this matter because all officers are expected to respond to any type of situation, as evidenced by the common job descriptions, university-wide overtime offerings, and cross-campus assignments.

The FOP contends creating two distinct campus specific units would not be consistent with the statutory objective to avoid overfragmentation of units. The additional duties of University Police Officers at the Lewes campus result directly from the lack of a security force at that campus and do not negate the community of interest shared by all similarly ranked University of Delaware police officers.

University of Delaware:

The University of Delaware asserts the police officers assigned to the Lewes campus have substantially different duties, skills and working conditions from the officers assigned to the Newark campus. It argues the Lewes officers primarily serve a security function, whereas the Newark officers are predominantly involved in law enforcement activities. There is a security force at the Newark campus which performs the security functions Lewes officers are required to perform. The working conditions at these two campuses are substantially different.

The University argues there is very little interchange of officers between the two campuses, and that the special events on which Lewes officers are required to work at the

main campus at Newark are limited to a few times each year. The officers at the two campuses work different shift schedules and report to different supervisors.

The University also contends the Delaware PERB should adopt the federal presumption that single facility bargaining units are appropriate, thereby placing the burden on the party arguing for a multiple facility unit to rebut that presumption. The University argues the FOP has failed to rebut this presumption; therefore, PERB must create two facility specific bargaining units.

OPINION

The determination of bargaining unit appropriateness depends upon a factual analysis on a case-by-case basis, rather than a mechanical application of the rule of law. AFSCME Council 81 and Del. Turnpike Administration, Del.PERB, Rep. Pet. 95-06-140, II PERB 1189, 1193 (1995); In RE: Rehoboth Beach Police Dept. and IBT Local 326, Del.PERB, Rep. Pet. 96-10-198, III PERB 1531 (1997).¹ There is no bright line standard that clearly delineates appropriateness in all cases.

Consistent with the federal approach under the National Labor Relations Board (“NLRB”), the Delaware PERB has held a proposed bargaining unit need only be appropriate under the statutory criteria, and not necessarily the most appropriate unit in order to be certified. Lake Forest Education Assn. v. Lake Forest Board of Education, Del. PERB, Rep. Pet. 91-03-060, I PERB 651 (1991).

¹ Prior Delaware PERB rulings decided under the Public School Employment Relations Act, 14 Del.C. Chapter 40 (1982), and /or the Public Employment Relations Act, 19 Del.C. Chapter 13 (1994) are controlling to the extent that the relevant provisions of those statutes are identical to those of the Police Officers and Firefighters Employment Relations Act, 19 Del.C. Chapter 16 (1986). AFSCME v. Delaware DOT, Del.PERB, ULP 95-01-111, II PERB Binder 1279 (1995).

PERB has also held that it must first evaluate the appropriateness of the unit proposed by the union on behalf of the employees. In RE: Caesar Rodney School District Instructional Aides, Del.PERB, Rep. Pet. 92-03-070, II PERB 821, 829 (1992). It is logical that where the union's proposed unit is found not to meet the statutory criteria for appropriateness, the appropriateness of the employer's proposed alternative unit should then be considered. This is consistent with the federal practice under the NLRB:

Determination of an appropriate bargaining unit is guided by the objectives of ensuring employee self-organization, promoting freedom of choice in collective bargaining, and advancement of industrial peace and stability. These objectives are realized when the members of an appropriate unit share, *inter alia*, a community of interest in wages, hours and other terms and conditions of employment.

[NLRB] inquiry pursues not the most appropriate or comprehensive unit but simply an appropriate unit. Once this unit is determined, the requirements of the Act are satisfied. The inquiry first considers the petitioning union's proposals. If the union's proposed is inappropriate, the employer's proposals are then scrutinized... PJ Dick Contracting and IUOE Local 66, 290 NLRB 24, 129 LRRM 1144 (1988). (*citations omitted*)

Only two presumptions concerning appropriateness have been applied by the PERB. The first is applied to units which were created prior to PERB jurisdiction and which are statutorily grandfathered as appropriate. The second presumption addresses the issue of overfragmentation. Consistent with the purposes of the statutes in promoting harmonious and cooperative relationships and protecting the public by assuring the orderly and uninterrupted operations and functions of the public employer, PERB presumes the unit appropriate which leads to the creation of the fewest number of bargaining units as are consistent with the efficient operation of government. AFSCME

and DHSS, Div. of Mental Retardation, Del.PERB, Rep.Pet. 98-12-249, III PERB 1875 (1999).

While PERB may look to the federal sector for guidance, decisions and policies rendered under the Labor-Management Relations Act do not constitute binding precedent. Seaford Education Assn. v. Seaford Bd. of Education, Del.PERB, ULP 2-2-84S, I PERB 1 (1984). This agency is not unmindful, however, that where Delaware law mirrors the federal law, it is reasonable and prudent to begin its analysis by examining the federal case law.

The University argues the single facility presumption of appropriateness applied by the NLRB should be adopted for the public sector in Delaware. There are a number of fundamental differences between the LMRA and the POFERA. First, while private sector employees covered by the LMRA have the right to strike, Delaware's public employees do not. The importance of single facility bargaining units on the economic welfare of an employer faced with a strike by its employees is immediately obvious, and supports a bias toward single facility units. Second, the geographic size of the State of Delaware is relatively small in comparison to the large multi-state employers the NLRB traditionally deals with. The vertical integration of multiple work sites of private sector employers often creates very different working conditions at each facility, which may serve a very specific function in the production cycle. This is not consistent with PERB's experience in examining the multi-site operations of most public employers, where consistency across an organization is more commonly sought.

Consequently, the PERB has examined the working conditions of each group of employees on a case-by-case basis. This is consistent with the practice of its predecessor,

the Governor's Council on Labor, and has resulted in both department-wide and geographically specific units, depending upon the circumstances presented by the petition. PERB has not adopted a presumption of appropriateness for either type of unit, and declines to do so in this case as well.

Therefore, the analysis of this petition begins with an examination of the appropriateness of the single University-wide unit proposed by the FOP. Should this unit not be determined to be appropriate, the two campus-specific units proposed by the University will be examined.

While a number of factors impact the determination of an appropriate bargaining unit, none alone is determinative. The statute mandates the PERB consider the following:

- The similarity of duties, skills and working conditions of the employees involved;
- The history and extent of employee organization;
- The recommendations of the parties involved;
- The effect of overfragmentation on the efficient administration of government; and
- Such other factors as the Board may deem appropriate. (19 Del.C. §1610(d).

This petition concerns police officers who are basically assigned to two work locations. The Newark, or "main", campus of the University of Delaware hosts approximately 20,000 undergraduate and graduate students and is located within the municipality of Newark, Delaware. The Lewes campus is a small graduate research facility located near the ocean in Lewes, Delaware, approximately 90 miles from Newark.

The University employs between twenty and thirty police officers and twelve security officers at its Newark campus, and four police officers at its Lewes campus.

University police officers are hired through a University-wide process. There is a single job description for each of the four existing ranks in issue here and those job descriptions apply to all officers in those ranks, regardless of their work assignment. All of the officers in question are required to possess an Associate's degree or equivalent credits (a minimum of 60) and at least one year's experience as a security or law enforcement officer. The "special requirements" for these positions include:

- Possession of a valid motor vehicle operator's license;
- Passage of a pre-employment drug screen and other pre-employment tests to measure mental skills, motor skills, writing skills, physical fitness and agility necessary to police work and a comprehensive background investigation.
- Successful completion of mandatory Delaware police training or the equivalent as defined by the Delaware Council on Police Training, within one year of initial hire.

All officers are required to maintain their Law Enforcement and Weapons Certification throughout their employment.

The "Police Officer" job description states officers perform "police patrol work under limited supervision" and includes the following examples of typical work:

- Patrols the campus, either on foot or by vehicle, to ensure the security of facilities and the safety of students, staff and visitors; prevents and deters crime by observation and confrontation of unusual circumstances and individuals; notifies supervisors of security defects; locks and unlocks buildings;

- Responds to, initiates investigation into, and reports crimes or incidents in violation of State law, City code or University rules which impact on the safety of the University community.

- Takes enforcement action and makes apprehensions as required; completes all necessary documentation including preparation of summonses or warrants, affidavits, reports, referrals and arrest paper work; notifies supervisors of all enforcement related activities.

- Preserves crime scenes, collects and preserves evidence; identifies and interviews witnesses, suspects and victims of criminal incidents; assists other law enforcement officers in investigations;

Prepares and presents or assists in presentation of cases in courts or other official proceedings;
Performs traffic direction and crowd control duties as assigned.
Renders first aid; transports sick, injured or otherwise disabled persons;
Assists visitors, students, and staff by providing information, directions and assistance;
Supervises other police officers, security officers and/or miscellaneous wage and/or student employees;
Participates in training and certification sessions;
Inputs, searches and modifies appropriate computerized criminal justice information systems;
Performs other related duties as assigned.

All University police officers are covered by the same wage and benefit package, which applies to all of the University's unrepresented, salaried employees. Overtime opportunities are posted to both campuses, as are job openings and promotional opportunities. Officers assigned to the Lewes campus are required to work at the main campus in Newark for certain events at which large crowds are anticipated, including Homecoming, Commencement and night football games, at a minimum. Lewes officers who work these special events on the main campus do not require any additional or specialized training in order to perform this work.

Officers assigned to the main campus work fixed eight-hour shifts which do not rotate, whereas Lewes officers work shifts that rotate through a twenty-eight (28) day cycle, with one officer assigned to a permanent day-time eight hour shift. There is a single Chief of Police, who is also the Director of Public Safety for the University. His office is located in Newark. He issues General Orders which apply to all officers. Additionally, procedural memoranda may be issued which address campus-specific issues.

The statute does not require that all members of a bargaining unit perform identical functions. In RE: Battalion Chiefs of the Wilmington Fire Dept, Del.PERB, Rep. Pet. 96-10-198, III PERB 1531,1535 (1997). However, all bargaining unit positions must share a community of interest premised upon a similarity of duties, skills and working conditions. In RE: Dover Police Dept. Lieutenants and FOP Lodge 15, Del.PERB, Rep. Pet. 98-08-242, III PERB 1831 (1999).

Factors which warranted consideration in determining the existence of substantial differences in interests and working conditions include: a difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions ...; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining. Kalamazoo Paper Box Corporation, NLRB, 136 NLRB 10, 49 LRRM 1715 (1962).

Based on the totality of the record in this matter, the differences in duties, skills and working conditions of the officers at the Newark and Lewes campuses are not sufficient to establish these employees do not share a community of interests. All of the officers in question are working within their job descriptions, although the amount of time each officer spends doing specific types of work varies. It is apparent that an officer working in an environment which includes 20,000 people would have more occasion to perform traditional "law enforcement" types of activities. This does not, however, negate the fact that officers working at the smaller Lewes campus are required to be certified and prepared to perform these same types of functions should the need arise.

Although the University relies heavily on the argument that the Lewes officers perform primarily security functions, those functions are included within both the Police Officer and Master Police Officer job descriptions. The University has a Security Officer

classification and employs Security Officers at its Newark campus. Given that it did not staff its Lewes campus with Security Officers, one can reasonably conclude the University sought to insure the safety of that campus through the presence of trained law enforcement officers. These officers are required to have the same training, to maintain the same certifications, and to perform at the same levels as the Newark officers should circumstances dictate.

It is also clear from the record that the University's police force is not differentiated by campus assignment with regards to hiring, wages, benefits, overtime and promotional opportunities. A single Chief of Police is responsible for oversight of the public safety functions for the entire university. The difference in shifts and the limited interchange between the two campuses is not sufficient to overcome the many similarities shared by all University of Delaware police officers.

The statute also requires a consideration of "the history and extent of employee organization." There is no history of either representation or collective bargaining involving University of Delaware Police Officers.

The recommendations of the parties in this case are opposed, and thus, must be weighed within the context of the overall record.

Overfragmentation of bargaining units is a relative consideration depending upon the circumstances under which it arises. County of Ocean and CWA (NJPERC, D.R. 96-2 (1995)). The Delaware PERB has established a policy favoring creation of the fewest possible bargaining units. Where, as here, the unit proposed by the union is for a single unit of unrepresented employees, overfragmentation does not impact the finding of appropriateness.

As the unit proposed by the petitioning FOP on behalf of the unrepresented employees is appropriate within the meaning of 19 Del.C. §1610(d), and the statute does not require this agency designate only the most appropriate unit, there is no need to balance the relative appropriateness of the employer's proposed unit.

DECISION

Based upon the record created by the parties and for the reasons set forth herein, the appropriate bargaining unit, considering the criteria set forth in 19 Del.C. §1610(d), is determined to be:

ALL UNIVERSITY OF DELAWARE POLICE OFFICERS AT AND
BELOW THE RANK OF SERGEANT.

An election will be scheduled forthwith to determine if and by whom these employees desire to be represented for purposes of collective bargaining.

It is so ordered.

/s/Deborah L. Murray-Sheppard
DEBORAH L. MURRAY-SHEPPARD
Hearing Officer
De.Public Employment Relations Bd.

DATED: 13 March 2001